



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** June 23, 2009

**TO:** Mayor and Councilmembers

**FROM:** City Attorney's Office

**SUBJECT:** State Use Of Local Highway Users Tax Account (HUTA) Funds

### RECOMMENDATION:

That Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Authorizing the City Attorney to Cooperate With the League Of California Cities as Well as Other Cities And Counties In Litigation Challenging The Constitutionality of Any Seizure By State Government of Santa Barbara's Share of the Street Maintenance Funds Generated by the State Highway Users Tax.

### DISCUSSION:

In his final revised May Revision, Governor Schwarzenegger proposed the seizure of almost \$1 billion in city and county shares of revenues in the Highway Users Tax Account (HUTA) generated from the motor fuel tax (or gallonage gas tax) in order to allow the State to fund past and future highway bond debt service payments out of the State general fund. On Thursday, June 11<sup>th</sup> the Joint Budget Conference Committee endorsed this recommendation on a party line vote. However, it is clear to attorneys employed and retained by the League of California Cities that this recommendation, if enacted into law, could be unconstitutional. In fact, in both 1974 and 1998 voters enacted limitations on the power of the legislature to seize and use HUTA gas tax funds, allowing only loans to the State general fund on a limited basis. A legal opinion from the Sacramento law firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, prepared at the request of the League, sets forth this legal analysis and concludes that the Governor's proposal may violate Article XIX of the California Constitution.

The League has developed the attached sample resolution for those cities that wish to direct their city attorney to cooperate with the League, and with other cities and counties in planning litigation challenging the constitutionality of the proposed re-allocation of city and county funds. It does not commit the City to filing litigation, but it directs the City Attorney to cooperate and work with the League and other local governments to advance the litigation if the City Attorney believes it appropriate to do so. If litigation proves necessary in the next month or so, we anticipate there will be some lead cities and counties, along with the League who may initiate the lead in such litigation. It may eventually prove desirable to have every interested city named in the litigation. As a

result, we believe that authorizing the City Attorney's office to cooperate in the planning of this possible next step is appropriate at this time.

The draft resolution also directs the City Clerk to send copies of the Resolution to the City's local legislators, the Governor, the League, and any community groups that care about traffic safety in order to express the City's opposition to this possible HUTA re-allocation.

**PREPARED BY:** Stephen P. Wiley, City Attorney

**SUBMITTED BY:** City Attorney's Office

**APPROVED BY:** City Administrator's Office